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**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

PETITIONS OF UNITED PARCEL SERVICE CO.)
AND FEDERAL EXPRESS CORPORATION TO)
INSTITUTE A PUBLIC INQUIRY INTO THE)
CITIZENSHIP AND FOREIGN CONTROL OF)
DHL AIRWAYS, INC.)

Docket OST-2002-13089 — 5

DEPT OF TRANSPORTATION
WASHINGTON, D.C.
SEP 17 2002

**CONTINGENT MOTION FOR LEAVE TO FILE AN
OTHERWISE UNAUTHORIZED DOCUMENT AND REPLY
OF UNITED PARCEL SERVICE CO.**

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September 17, 2002

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DHL Airways' Answer to UPS' Petition asserts that the matter of its citizenship is closed and should not be reviewed in a public proceeding. Nonetheless, the publicly-known facts compel a searching review since they raise serious doubt under CAB and DOT precedent whether DHL Airways is a foreign-controlled entity. In its Petition, UPS has highlighted additional facts abundantly demonstrating, *inter alia*, that DHL Airways is financially dependent on a single foreign customer, DHL Holdings (U.S.A.), Inc. ("DHL Holdings"), which DHL Airways now concedes is 100%-owned by foreign entities, and is ultimately controlled by Deutsche Post, the German postal monopoly.¹ In this Reply, UPS underscores that the unusual importance and complexity of this matter require a review in a public forum through an oral proceeding before an Administrative Law Judge ("ALJ").

¹ This proceeding is of substantial public importance because, at bottom, it concerns whether the state-owned German postal service, Deutsche Post, with its monopoly on first-class mail, and its ability (and historic use of) those revenues to cross-subsidize competitive ventures in the private sector, ultimately is in control of this U.S. air carrier. This case also involves issues of whether the Department can and should reach decisions in complex cases of this nature without public participation and without even informing the public of its rationale.

In support of this Reply,² UPS respectfully states as follows:

I. DHL AIRWAYS DOES NOT MEET THE DEPARTMENT'S CITIZENSHIP REQUIREMENTS

1. In its Answer, DHL Airways concedes that U.S. law, as reflected in CAB and DOT precedent, requires that U.S. air carriers must not merely meet the statutory stock ownership and management citizenship criteria, but must also be “actually controlled” by U.S. citizens. *See* DHL Airways’ Answer at 5. The Department makes these *de facto* foreign control determinations on a case-by-case basis by applying various indicia of control to the circumstances presented. Indeed, as discussed below, new facts (publicly-revealed for the first time in DHL Airways’ own Answer) would be sufficient under the case precedents to call for a searching Departmental review of whether non-U.S. citizens control that entity.

2. A review of the numerous CAB and DOT decisions readily reveals a set of control indicia under which DHL Airways should be evaluated in order to determine whether it is impermissibly controlled by a foreign entity or entities. These indicia include the following:

- Presence of a sole or dominant foreign customer.³

² UPS filed a Petition to institute a public inquiry into the citizenship and foreign control of DHL Airways on August 9, 2002, and DHL Airways filed an Answer to that Petition on September 6, 2002. This filing serves as a Reply to that Answer. To the extent that this proceeding is considered a certificate proceeding pursuant to Subpart B of the Procedural Rules of the Department of Transportation (the “DOT” or the “Department”) replies are permitted. *See* 14 C.F.R. § 302.204. To the extent that the Department considers this proceeding not within that rule, UPS requests that this Reply be received as an otherwise unauthorized document. *See* 14 C.F.R. § 302.6(c). UPS believes that the Department should have all relevant material before it in deciding this important case. The material presented herein is relevant to the Department’s consideration of this proceeding, and receipt and consideration of this Reply would not unduly burden or delay the proceeding.

- Carrier's business is conducted in a system of foreign commonly-controlled companies.⁴
- Foreign entity has ability to control certain fundamental corporate actions of the carrier.⁵
- Carrier and foreign owner share physical office space and communications systems.⁶
- Carrier is dependent upon a sole foreign-entity supplier of aircraft.⁷
- Common business name and marketing.⁸
- Common legal counsel and consultants.⁹
- Carrier is a direct successor to a foreign entity and was created wholly at the instance of the foreign entity.¹⁰

³ DOT precedent states that a carrier having only one customer is effectively controlled by that customer. *See, e.g., Executive Air Fleet, Inc., Consent Order*, Order 92-9-46 (1992) and *Air-Evac Air Ambulance, Inc.* Order 95-3-3 (1995).

⁴ A carrier operating as the U.S. extension of a foreign company may be unduly controlled by the foreign entity. *See, e.g., In re Intera Arctic Services, Inc.*, Order 87-8-43 (1987); *Willye Peter Daetwyler, d/b/a Interamerican Freight Co., Permit*, 58 C.A.B. 118 (1971).

⁵ For example, corporate governance documents may reveal a veto power over modification or termination of key agreements. *See, e.g., In re Intera Arctic Services, Inc.*, Order 87-8-43 (1987); *Wrangler Aviation*, Orders 95-7-31 (1995) and 93-7-26 (1993); *Lone Star Airlines*, Order 94-8-44 (1994); *Petition of Allegis Investors Group*, Order 87-7-42 (1987); *In re Page Avjet Corp.*, Order 84-8-12 (1984).

⁶ In previous cases, DOT has found that a carrier sharing office space and phone systems with its sole customer is a strong indicator of control by that customer. *See, e.g., Servicios Aereos Profesionales*, Order 2000-7-15 (2000); *Wrangler Aviation*, Orders 95-7-31 (1995) and 93-7-26 (1993); *Air-Evac Air Ambulance, Inc.* Order 95-3-3 (1995); and *Executive Air Fleet, Inc.* Order 92-9-46 (1992); *Trans-Panama, S.A., Foreign Permit*, Order 82-9-62 (1982).

⁷ *See, e.g., Discovery Airways*, Order 89-12-41 (1989); *Trans-Panama, S.A., Foreign Permit*, Order 82-9-62 (1982).

⁸ DOT has found that a carrier bearing a name similar to that of its sole customer may be an indicator of control by the customer. *See, e.g., Air-Evac Air Ambulance, Inc.*, Order 95-3-3 (1995).

⁹ Retention of the same advisors may indicate that the two entities have a shared focus on strategic matters and require harmonized guidance. *See, e.g., Air-Evac Air Ambulance, Inc.* Order 95-3-3 (1995).

¹⁰ *Willye Peter Daetwyler, d/b/a Interamerican Freight Co., Permit*, 58 C.A.B. 118 (1971).

3. An evaluation of even those limited facts, as have so far been made public, compellingly demonstrates that DHL Airways is controlled by a foreign entity or entities:

A. **Presence of sole or dominant foreign customer.** DHL Airways does not appear to contest this. In its May 13, 2002, Form 41 filing, DHL Airways revealed that DHL Holdings, a foreign citizen 100% owned by DHL International, Ltd., another foreign citizen, is its “primary customer.” *See* DHL Airways’ Answer at p.5, fn.5 and UPS Petition, Exhibit 1. DHL Airways’ Form 41 shows that it receives virtually all of its revenue from DHL Holdings and that this foreign company also pays for DHL Airways’ fuel, landing fees, ground-handling, aircraft service, and loading costs. Further, by a reasonable reading of the DHL website,¹¹ DHL Worldwide Express, Inc. (ultimately owned by DHL International, Ltd.)¹² performs all of the marketing and own the ground infrastructure of the air carrier’s enterprise. On these facts, unrefuted by DHL Airways’ Answer, it appears that non-U.S. citizens control the vital economics of the airline on both the revenue and cost sides of the ledger. DHL Airways would simply not exist without these critical links to foreign interests. It simply has no other means of support.¹³ For all practical purposes, DHL Airways has only one customer—a foreign one. In its Answer, DHL Airways does not deny that nearly all of its revenue comes from a foreign

¹¹ *See* <http://www.dhl-usa.com>.

¹² *See* Registration Under Part 297 (OST Form 4506) of DHL Worldwide Express, Inc. and Letter from S. Lachter, Counsel to DHL, to C. McGuire, DOT (Oct. 18, 2000).

¹³ According to the Form 41 Report, even if 100% of DHL Airways’ charter traffic were conducted for non-DHL Holdings-related entities, the percentage of revenue derived from such charters would have amounted to less than 1/100th of one percent of DHL Airways’ total revenues. Stated otherwise, DHL Airways’ charter revenues accounted for 0.0049626 of its total revenues. Thus, essentially all of the traffic and revenue of DHL Airways comes from DHL Worldwide Express and DHL Holdings, both foreign citizens.

entity. In other words, it concedes that it is economically dependent on foreign interests, one of whom (DHL Holdings) also owns 45% of its total equity and 25% of its voting shares. Under clear CAB/DOT precedents, such a high level of economic dependence is disqualifying. Faced with these uncomfortable facts, DHL Airways can only offer excuses and resort to vague, unspecific remedies. Thus, it states: “An important part of Airways’ business plan is to expand its customer base.” *See* DHL Airways’ Answer at 19. But it admits, in the same breath, that actually getting out from under foreign control has been “particularly challenging under recent market conditions, especially since September 11, 2001.” *Id.* The fact remains, therefore, that DHL Airways continues to be almost exclusively dependent on foreign interests to sustain its operations. There is no indication when, if ever, the situation will change. The DOT should enforce the law on the basis of the facts before it, not on vague promises.

B. Relationship of dominant foreign customer to foreign owners.

In this case, it appears that the customers and owners are one and the same. On July 5, 2002, Deutsche Post announced its purchase of Lufthansa’s 25% stake in DHL International Ltd., bringing its total holding in the company to 75.6%. Deutsche Post also has announced its intention to purchase an additional 22% share of DHL International Ltd. from investment funds, pending regulatory approval. The remaining 2% of DHL International Ltd. is held by Japan Airlines. DHL International Ltd. wholly-owns DHL Worldwide Express, B.V., a Dutch company that in-turn wholly-owns DHL Worldwide Express, Inc. who, with DHL Holdings, is responsible for DHL Airways’ revenue—insofar as we can determine at this point.

C. Carrier's business is conducted in a system of foreign commonly-controlled companies. DHL Airways is but one entity in the DHL worldwide network of companies, which ultimately is majority-owned by the Deutsche Post. In addition to DHL Airways, this network includes at least three non-U.S. citizens: DHL Holdings, DHL Worldwide Express, and DHL International. The current organization of DHL Worldwide Express' operations in the United States appears to serve only as a means by which the Deutsche Post can enter the U.S. domestic market.

D. Co-location of physical office space and communications systems. DHL Airways and DHL Worldwide Express, the Part 297 registered foreign air freight forwarder, share common offices and telephone numbers. Information from the Nevada Secretary of State and the DHL's website indicate that the address of DHL Worldwide Express, Inc. is 50 California Street, Suite 500, San Francisco, California. *See* Exhibit 1, attached hereto. Information from the Secretary of State of California lists the office of DHL Holdings (U.S.A.), Inc. as 50 California Street, Suite 500, San Francisco, California. *See* Exhibit 2, attached hereto. California also lists DHL Worldwide Express at the same address. *Id.* A DOT Application filed by DHL Airways (Docket OST-2001-10052) sets forth the address of the Senior Vice President, Secretary and General Counsel of DHL Airways as being at 50 California Street, Suite 500, San Francisco, California, with a telephone number of (415) 677-6119. (However, in this proceeding, DHL Airways lists its office as a P.O. Box in Chicago.) The telephone number for DHL Worldwide Express is listed on its website as (415) 677-6100. Thus, DHL Airways appears to share or have shared both office space and a phone system with its sole customer and foreign relative.

E. **Co-location of virtual office space/website.** In searching for the website of DHL Airways, one is led to <http://www.dhl-usa.com>. Although the website states that the information it contains is the “property of DHL Airways,” it bears the DHL Worldwide Express logo and includes a timeline that details the growth and expansion of DHL Worldwide Express. On that website, at the top of most pages is the logo “DHL Worldwide Express.” At the bottom of most pages, the following language is set forth, “2000 DHL Airways, Inc., All Rights Reserved.” *See* Exhibit 3, attached hereto. Thus, DHL Airways now appears to share virtual office space and an information technology system with its foreign relative and, presumably, its sole customer.

F. **Common Name and Marketing.** In the case of DHL Airways, DHL Worldwide Express, and DHL International, the similar names have allowed both entities to refer to themselves generally as “DHL.”¹⁴

G. **Common Legal Counsel/Consultants.** In the FCC Radio Application filings attached as Exhibit 3 to UPS’ Petition in this docket, it appears that DHL Airways and DHL Worldwide Express were represented by the same law firm.¹⁵

¹⁴ *See generally* <http://www.dhl-usa.com>.

¹⁵ Letter from Mark S. Morelli, Wilmer, Cutler & Pickering, to the Federal Communications Commission, *In re KEY993 et al.* (May 8, 2001); *see also* Registration of DHL Worldwide Express, Inc. for Part 297 Authority, Motion of DHL Worldwide Express, Docket OST-2001-8732-4 (Jan. 25, 2001) (listing Wilmer Cutler & Pickering as counsel of record for DHL Worldwide Express); Joint Renewal Application of DHL International E.C. and DHL Airways, Inc., Dockets OST-99-5470 & 00-6937 (Jan. 4, 2001) (listing Wilmer Cutler & Pickering as counsel of record for DHL International and DHL Airways). Further, DHL Worldwide Express and DHL Airways have operated under a common General Counsel. *See* Registration Under Part 297 (OST Form 4506) of DHL Worldwide Express, Inc. (Oct. 18, 2000) (listing Jed Orme, Senior V.P., General Counsel and Secretary, DHL Worldwide Express, Inc., 333 Twin Dolphin Drive, Redwood City, CA); Application of DHL Airways, Inc., Docket OST-00-6937 (Feb. 14, 2000) (listing Jed Orme, Senior Vice President, Secretary & General Counsel, DHL Airways, Inc., 333 Twin Dolphin Drive, Redwood City, CA). It is unknown whether this commonality continues.

II. DHL AIRWAYS' ANSWER ADDS "NEW FACTS" AND RAISES FURTHER SERIOUS QUESTIONS ABOUT ITS OWNERSHIP AND CONTROL

4. DHL Airways' Answer makes public for the first time that a single individual, Mr. William A. Robinson, owns 55% of the total equity and 75% of the voting equity of DHL Airways. All we are told about Mr. Robinson is that he was among the founders of "DHL," that he is not now an officer, director or employee of Deutsche Post, DHL Holdings, or any other company that operates under the DHL brand name, and that he used "personal funds" to purchase his shares. Mr. Robinson's ownership raises a host of significant questions:

- Q: To what extent was Mr. Robinson's acquisition of DHL Airways' voting and non-voting equity—which perfectly matched the DHL Holdings' share allocation required by the statute—an arms-length transaction, or was it merely a mechanism for satisfying the statutory control criteria?
- Q: What was the purchase price of DHL Airways and with whom did Mr. Robinson negotiate to arrive at this price?
- Q: If Mr. Robinson paid little or nothing for the stock, would that also show that DHL Airways is an under-capitalized entity in the hands of foreign interests?
- Q: Did Mr. Robinson make this purchase with the expectation that DHL Airways would continue in an exclusive commercial and operational relationship with other DHL entities that are non-U.S. citizens? If so, would this make him, as holder of the majority of voting and equity shares, indebted to those entities or persons tied to those entities to the extent that he would be under their control?

5. DHL Airways' own Answer suggests that Mr. Robinson and DHL Airways are tied financially to foreign interests, as the Form 41 data shows. Even if Mr. Robinson had the control DHL Airways alleges he does, Mr. Robinson would still be under the control of his only customer – a non-U.S. citizen.

III. THE DEPARTMENT SHOULD REFER THE QUESTION OF DHL AIRWAYS' CITIZENSHIP TO AN ADMINISTRATIVE LAW JUDGE FOR CONSIDERATION IN A PUBLIC PROCEEDING

6. DHL Airways' Answer, including its assertion of hitherto unknown information, only adds to the need for a rigorous, independent fact-finding exercise of this matter. The complexity of the foreign control issues, the apparent involvement of foreign public entities, and the opacity of DHL Worldwide Express' structure and relationships all argue strongly for an ALJ proceeding. Simply stated, the relationships among the German Government, Deutsche Post, DHL International, DHL Holdings, DHL Airways, and DHL Worldwide Express within the whole DHL worldwide network raise substantial questions and disputed issues of material fact (as DHL Airways' Answer itself makes evident) that can best be addressed in an oral evidentiary hearing before an ALJ.

7. Such an approach is fully consistent with the administrative law principles and DOT policy. The Department has often made its examination and review of a reported substantial change in ownership the subject of extensive public attention and participation. As previously noted, the most visible recent cases involved the KLM's purchase of a considerable interest in Northwest Airlines and British Airways' proposed acquisition of interests in USAir. Contrary to DHL Airways' contention, those precedents are not distinguishable in any meaningful sense from the situation at hand. Those cases, like the instant matter, were undertaken because, as here, substantial and credible factual objections to claims of continuing U.S. citizenship had been raised and were clearly at issue. The Department has also used public proceedings when it has become aware of publicly-available information suggesting that the carrier has undergone

a substantial change in its ownership, management, operations or financial condition, and no information filing has been made.¹⁶

8. While opting for a public evidentiary process may involve the use of some additional staff resources, this moderate expenditure is worth preserving the public's right to fair and equal treatment and ensuring even-handed compliance with Department standards—which is at stake in unusual cases such as this.¹⁷ The Department is also fortunate to have skilled ALJs at its disposal to develop the record and to apply the precedent and policy to the facts presented.

9. A public proceeding under the supervision of an ALJ has been the mechanism traditionally employed by the Department (and other U.S. agencies) in evaluating contested factual disputes. For example, the Department used an oral evidentiary hearing before an ALJ with excellent and good effect to address the question of control potentially exercised by a foreign national in the *Discovery Airways* case.¹⁸ There, the concern arose from the close professional relationship between Philip Ho, a U.S. citizen and a foreign company of which he was president. The issues included whether the foreign company had provided the funds for Mr. Ho's investment in the carrier, whether Mr. Ho was related to other owners or officers of the foreign company, and whether, as president, he had a fiduciary obligation to promote the foreign

¹⁶ See, e.g., *Air Transport International LLC*, Order 98-8-32 (1998); *Wrangler Aviation, Inc.*, Order 95-7-31 (1995); *Air-Evac Air Ambulance, Inc.* Order 95-3-3 (1995).

¹⁷ To permit such public scrutiny, DHL Airways would, of course, be required to make available information as to its ownership and control to the same extent that such information is made publicly available at the time of the initial licensing process. Any commercially sensitive information can be accorded confidential treatment under Rule 12 of the DOT's Rules of Practice.

¹⁸ See *Application of Discover Airways*, Order 90-1-60 (Jan. 29, 1990).

company's interests. Similar questions are presented in the instant matter involving DHL Airways' citizenship.

10. Moreover, the Department set down for ALJ hearing as recently as 1994, the closely related issue of air carrier managerial fitness. This case was to resolve the issue of whether a new entrant would be under the control of Frank Lorenzo, who was allegedly responsible for serious maintenance and operational problems at Eastern Airlines and Continental in the late 1980s.¹⁹

11. Recognizing that the Department needs to exercise judgment as to when disciplined fact-finding is needed, UPS submits that the DHL Airways matter is clearly such a case. The determination of whether DHL Airways is a U.S. citizen involves far more than a direct assessment of who holds how many voting rights, but rather a close evaluation of the subtler concept of corporate "control." This control test involves multiple inquiries and a constellation of factual determinations. Three such disputed issues include, for example:

- the precise nature of the relationships between the air carrier and foreign nationals, particularly foreign government ownership;
- the existence of complex corporate structures involving multiple "intermediate" entities between the air carrier and its ultimate owners; and
- evidence that the air carrier's revenue comes from a single source, or that it is otherwise dependent upon a single entity.

12. Given the presence of substantial, complex and determinative disputed issues of material fact, the Department should resolve them in this case in an oral evidentiary hearing before an ALJ. An adversarial process before an ALJ would also

¹⁹ *ATX, Inc. Fitness Investigation*, Order 94-4-8 (Apr. 5, 1994).

benefit the Department by affording it financial and corporate governance expertise outside its core function.

13. Finally, the assignment of a case to an ALJ would help preserve public confidence in the decision-making process. The Administrative Procedure Act guarantees the impartiality and independence of ALJs. In a contested and controversial case their use should be encouraged, particularly where there have already been extensive contacts and communications between DOT officials and the carrier in question.

IV. STATEMENTS MADE IN DHL AIRWAYS' ANSWER

14. Doubtless on the theory that the best defense is an aggressive offense, DHL Airways devotes part of its Answer to repeating its charge that UPS' motives in this case are somehow anti-competitive. This contention serves only to remind one of an old legal chestnut: When the law is not on your side, pound on the facts; when the facts are not on your side, pound on the law; and, when neither is on your side, pound on the table.

15. UPS welcomes competition from any *bona fide* U.S. carrier; however, no privately-owned U.S. carrier should be required to compete against the German postal monopoly. The European Commission has twice in recent years demonstrated that Deutsche Post not only has the means, but also the disposition to cross-subsidize entities under its control in unfair competition with private carriers using its very substantial postal monopoly resources for this purpose.²⁰ UPS therefore has real and verifiable concerns about Deutsche Post's gaining control of U.S. carriers and replicating, in U.S. markets, the kinds of anti-competitive behavior that it has recently demonstrated in

²⁰ See European Commission Press Release, IP/02/890, Brussels, June 19, 2002 (imposing an 800 million Euro sanction on Deutsche Post).

Europe and for which it has been severely sanctioned by the EC. If, as all the public facts now strongly show, Deutsche Post is in ultimate control of DHL Airways, and is or may be in a position to underwrite the finances of that carrier, then UPS, and every other U.S. carrier, is being required to compete for domestic U.S. traffic against, ultimately, the German Government, owner of Deutsche Post. This is unfair competition to which U.S. carriers should not be exposed.

16. Moreover, the Department should not be misled into thinking that DHL Airways and its affiliates are insignificant participants in the air express and parcel business. According to the its website, DHL boasts “operations in 228 countries and territories and an approximate 40% market share of international express traffic – more than FedEx, UPS and Airborne combined.”²¹ Further, recent industry statistics verify that DHL’s market share of international express traffic (37.0% of daily shipment volume) is greater than that of UPS (14.0%) and FedEx (21.1%), combined (35.1%).²²

17. With respect to the repetitive pleading claim, DHL is wrong. UPS has a substantial interest in the matter and has a well-founded, fact-based reason to pursue every legitimate avenue available to it to ascertain whether its concerns have been addressed. Since the last round of pleadings, numerous new events have occurred and new facts have come to light. DHL Airways itself proffers “the current and correct facts” in its Answer. UPS only recently learned, for example, that there had been a DOT decision affirming the reorganized DHL Airways’ citizenship. And UPS only learned from the recently filed

²¹ See <http://www.dhl-usa.com/timeline> (citing its own market size in 1999) (printout attached hereto as Exhibit 4); see also <http://webapp2.dhl-usa.com/index> (click “Welcome to DHL” for “DHL Guided Tour” reciting international market share information).

²² Air Cargo Management Group, *International Air Freight and Express Industry Performance Analysis 2000*, at 37, figure 8 (Nov. 2000).

Form 41 of the existence of a company called DHL Holdings, and the customer-carrier relationship of that entity with DHL Airways. UPS only recently found and was able to bring to the DOT's attention the FCC filings and the FAA presentation referred to in UPS' Petition. UPS learned that DHL Holdings was not a U.S. citizen when DHL filed its Answer in this proceeding on September 6, 2002. Presentation of this material is hardly repetitive.

18. In fact, DHL Airways' Answer raises another question: How many times has the Department "approved" DHL Airways' citizenship? On its Form 41, DHL Airways states that the Department approved its reorganization in 2001. Yet Exhibit 1 to its Answer shows that DOT had an "on-going informal investigation" of DHL Airways' citizenship through May 1, 2002. Apparently, even DHL Airways did not understand when it had been "approved." Certainly, UPS cannot be chided for untimely filings, especially given that UPS had not been provided with a copy of either of DOT's findings, despite filing three petitions (with two dockets still open) questioning whether DHL Airways is controlled by U.S. citizens.

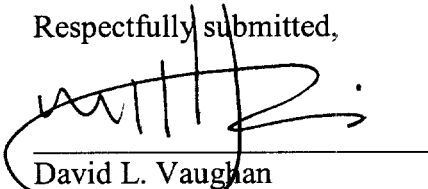
V. CONCLUSION

The facts developed in this docket create serious doubt that DHL Airways is a U.S. citizen under DOT precedent. If there were no other facts to be known, UPS would request that the Department institute proceedings to revoke DHL Airways' certificate. Yet, UPS acknowledges that all interested parties do not have all of the facts before them. In this circumstance, it is necessary to take a full review of all relevant facts, and this should be undertaken by means of an oral evidentiary hearing before an Administrative Law Judge. Only by means of a searching and public review—using the established

mechanism of oral evidentiary hearing—can the Department ensure in a case of this nature that all the relevant facts are known, that agency precedent has been applied properly to these facts, and that the DOT is not changing its policy on foreign control in a manner that is not transparent to the public or to other regulated entities.

WHEREFORE, United Parcel Service Co. respectfully requests the Department of Transportation to receive the foregoing Reply for consideration in this proceeding, commence a public proceeding into the citizenship of DHL Airways, Inc., preferably before an ALJ, and grant such other and further relief as may be found just or necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Vaughan", is written over a horizontal line.

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September 17, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September 2002, a copy of the foregoing document was sent, via first-class mail, postage prepaid to the following:

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Type: Corporation	File Number: C5583-2001	State: DELAWARE	Incorporated On: March 06, 2001
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	SEC. & DIR		
	SAN FRANCISCO	CA	94111
Treasurer:	WILLIAM J ROURE		
Address:	50 CALIFORNIA ST STE 500		
	SAN FRANCISCO	CA	94111

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1-800-CALL-DHL (225-5345)

DHL's Customer Service staff is committed to providing you with consistent, high quality service. All of our Customer Service agents are highly trained, international shipping experts. They are available 24 hours a day, seven days a week to schedule pickups, provide proof of delivery and to answer all your service questions, for both international and domestic shipping.

DHL Worldwide Express, Inc. Phone Numbers:

DHL Customer Service/Sales	800-225-5345
WorldFreight Customer Service For shipments with weight over 150 lbs. only	800-345-7775
<u>Same Day ServiceSM</u>	800-DHL-ASAP 800-345-2727
DHL Web Shipping Support	888-321-1321, Option 2
EasyShip® Technical Support	800-527-7298
<u>ThermoExpress Service</u>	888-299-2951
DHL Connect Support	888-321-1321, Option 1
Charter Service	800-354-1015

Corporate Headquarters United States

DHL Worldwide Express Inc.	50 California Street San Francisco, CA 94111 PH: 415-677-6100
Business Hours	Mon-Fri 8:00am - 5:00pm PST Sat-Sun Closed Holidays Closed

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California Business Portal

Secretary of State Bill Jones

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Corporation		
DHL HOLDINGS (USA), INC.		
Number: C2105341	Date Filed: 4/14/1998	Status: active
Jurisdiction: DELAWARE		
Mailing Address		
50 CALIFORNIA ST STE 500		
SAN FRANCISCO, CA 94111		
Agent for Service of Process		
C T CORPORATION SYSTEM		
818 WEST SEVENTH ST		
LOS ANGELES, CA 90017		

For information about certification of corporate records or for additional corporate information, please refer to Corporate Records. If you are unable to locate a corporate record, you may submit a request to this office for a more extensive search. Fees and instructions for requesting this search are included on the Corporate Records Order Form.

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

California Business Portal

Secretary of State Bill Jones

DISCLAIMER: The information displayed here is current as of AUG 23, 2002 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
DHL WORLDWIDE EXPRESS, INC.		
Number: C2336357	Date Filed: 3/15/2001	Status: active
Jurisdiction: DELAWARE		
Mailing Address		
50 CALIFORNIA ST		
SAN FRANCISCO, CA 94111		
Agent for Service of Process		
C T CORPORATION SYSTEM		
818 WEST SEVENTH ST		
LOS ANGELES, CA 90017		

For information about certification of corporate records or for additional corporate information, please refer to Corporate Records. If you are unable to locate a corporate record, you may submit a request to this office for a more extensive search. Fees and instructions for requesting this search are included on the Corporate Records Order Form.

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DHL's rapid growth reflects the globalization of trade. As its customers expand into international markets, DHL is there to meet their needs. Today, DHL Worldwide Express is the world's largest and most experienced



international air express network with service to 120,000 destinations in more than +220 countries and territories. DHL is majority owned by Deutsche Post World Net. Other shareholders include Lufthansa and Japan Airlines.

DHL's extensive worldwide coverage is supported by 4,070 offices. Of that total, over two-thirds are owned and operated by DHL, far more than any other company in the air express industry. As a result, DHL has a significant advantage over other air express carriers who use third party agents in foreign countries. DHL is also a licensed customs broker in more than 140 countries. These advantages result in faster transit times, streamlined customs clearance, effective tracking of shipments, and simplified billing.

DHL operates an unmatched global system of 36 hubs and 275 gateways. This allows for the rapid and efficient movement of shipments, resulting in fast, reliable and cost-efficient service. The network is serviced with a modern fleet of 102 aircraft in the U.S. and 251 aircraft worldwide. In addition to its own aircraft, DHL employs chartered and commercial airlines to move material. This gives DHL the flexibility to use the fastest possible means of transportation to any given destination.

As important as these facilities and equipment are to supporting DHL's global network, it is the worldwide team of 71,480 air express professionals whose commitment to anticipating, understanding and meeting each customer's unique shipping needs that makes DHL the industry leader.

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Timeline

DHL Worldwide Express International Timeline and Significant Milestones

• 1969 •

Adrian Dalsey, Larry Hillblom and Robert Lynn (D, H, and L) create an entirely new industry, starting door-to-door express service between San Francisco and Honolulu.

• 1971 •

DHL expands service to the Philippines.

• 1972 •

Service to Japan, Hong Kong Singapore, and Australia is initiated.

• 1974 •

DHL uses its substantial experience and expertise in the international air express industry to expand into Europe.

• 1977 •

Service to Latin America is initiated.

• 1978 •

DHL begins service to Africa and the Middle East; establishes a strong presence in Saudi Arabia.

• 1983 •

DHL is the first to bring international air express service to the Eastern Bloc countries. DHL opens U.S. hub in Cincinnati, Ohio.

• 1985 •

DHL opens an international hub in Brussels, Belgium.

• 1986 •

DHL forms a joint venture with the People's Republic of China and is the first to bring international air express services to that country.

• 1989 •

Brussels hub is expanded into a "superhub" to keep up with explosive growth in international shipments.

• 1991 •

DHL forms a strategic business alliance with Japan Airlines, Lufthansa, and trading company Nissho Iwai.

• 1992 •

DHL is the first air express company to reestablish service to Kuwait after the Gulf War.

• 1993 •

DHL takes over FedEx's European hub facility after FedEx dramatically curtailed its European express services. The expansion doubles the capacity of DHL's existing Brussels facility. DHL announces a 4-year \$1.25 billion worldwide capital spending program, with investments in handling systems, automation, facilities and communications and computer technology.

• 1995 •

DHL opens the first-of-its-kind gateway facility in Moscow, Russia, and greatly expands its China operations.

• 1996 •

DHL opens its Asia Pacific hub in Manila, Philippines. DHL becomes the first in the air express industry to receive ISO 9002 international quality certification for both its hub and airline operations for its Cincinnati hub facility.



• 1997 •

DHL introduces its WorldFreight product, offering U.S. customers more options for heavier weight shipments. DHL significantly enhances website to offer more shipping interactivity with customers.

• 1998 •

DHL has a turnover of more than \$4.2 billion and delivers more than 140 million shipments. DHL announces construction plans for new airline hub and sort facility in Cincinnati, Ohio. It also launches DHL Connect, a desktop shipping program that makes DHL even easier to use for U.S. customers. DHL is recognized as the world's "most global" business by Global Finance magazine. Deutsche Post purchases 25% of DHL International, Ltd.

• 1999 •

DHL celebrates its 30th anniversary, with operations in 228 countries and territories and an approximate 40% market share of international express traffic -- more than FedEx, UPS and Airborne combined.* It has an annual turnover of more than \$5.1 billion and delivers 160 million shipments. DHL and the United States Postal Service announce an alliance for the air express carrier to deliver Priority Mail Global Guaranteed Service from 11 U.S. cities to 19 countries. The alliance later expands to date-certain delivery to more than 200 countries from more than 20,000 U.S. Post Offices and changes name to Global Express Guaranteed.

*According to a 1998 study by the Air Cargo Management Group

• 2000 •

Construction begins on DHL's largest hub in Cincinnati. DHL will offer the industry's first on-line cost projection tool that will enable shippers to determine, in advance of shipping internationally, additive charges imposed by foreign customs authorities. DHL begins a \$1 billion-plus acquisition of 44 Boeing 757's for its European fleet. DHL announced it would move its U.S. headquarters from Redwood City, California to San Francisco. DHL opens new \$26 million national customer service center in Tempe, Arizona and the nation's second Express Logistics Center near the U.S. hub in Cincinnati.

DHL launches new Web Shipping product for U.S. based customers. The first internet-based service, designed to streamline the international shipping process, Web Shipping enables customers to determine dutiable status of shipments, create airbills, commercial invoices and other documents, as well as track shipments.

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